



[3410-11-P]

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 220

RIN 0596-AD01

National Environmental Policy Act: Categorical Exclusions for Soil and Water Restoration Activities

AGENCY: Forest Service, USDA.

ACTION: Final Rule.

SUMMARY: The U. S. Department of Agriculture, Forest Service, gives notice of revised procedures for implementing the National Environmental Policy Act and Council on Environmental Quality regulations. These final implementing procedures are being issued in regulations concerning National Environmental Policy Act Compliance, which describes categorical exclusions. Categorical exclusions (CE) are categories of actions that normally will not result in individual or cumulative significant impacts on the quality of the human environment and, therefore, do not require analysis or documentation in either an environmental assessment or an environmental impact statement.

The revision adds three new categorical exclusions for activities that restore lands negatively impacted by water control structures, disturbance events, and roads and trails. Activities that restore lands occupied by National Forest System Roads and National Forest System Trails are excluded from this final rule. These will allow the Forest Service to more efficiently analyze and document the potential environmental effects of soil and water restoration projects that are intended to restore the flow of waters into

natural channels and floodplains by removing water control structures, such as dikes, ditches, culverts, and pipes; restore lands and habitat to pre-disturbance conditions, to the extent practicable, by removing debris and sediment following disturbance events; and restore lands occupied by roads and trails to natural conditions.

These categorical exclusions will not apply where resource conditions related to the potential effect of a proposed action constitute an extraordinary circumstance.

Activities conducted under these categorical exclusions must be consistent with Agency procedures and applicable land management plans and must comply with all applicable Federal and State laws for protecting the environment.

The road and trail restoration category will be used for restoring lands impacted by roads and trails that are not needed, not maintained, and/or where public access is prohibited. This category will not be used to make access decisions about which roads and trails are to be designated for public use.

DATES: This rule is effective [insert date of publication in the **Federal Register**].

ADDRESSES: The Forest Service National Environmental Policy Act procedures, including its list of categorical exclusions, are set out in Title 36, Code of Federal Regulations, Part 220, which is available electronically via the World Wide Web/Internet at <http://www.gpoaccess.gov/cfr/index.html>. Single paper copies are available by contacting Peter Gaulke, Forest Service, USDA, Ecosystem Management Coordination Staff (Mail Stop 1104), 1400 Independence Avenue, SW, Washington, DC 20250-1104. Additional information and analysis can be found at <http://www.fs/fed/us/emc/nepa>.

FOR FURTHER INFORMATION CONTACT: Peter Gaulke, Ecosystem Management Coordination staff, (202) 205-1521. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay

Service (FIRS) at (800) 877-8339 between 8:00 a.m. and 8:00 p.m. Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

In 2009, Secretary of Agriculture Thomas J. Vilsack called for restoring forestlands to protect water resources, the climate, and terrestrial and aquatic ecosystems. The Forest Service spends significant resources on National Environmental Policy Act (NEPA) analyses and documentation for a variety of land management projects. The Agency believes that it is possible to improve the efficiency of the NEPA process to speed the pace of forest and watershed restoration, while not sacrificing sound environmental analysis.

The Forest Service is responsible for managing 192 million acres in National Forests, National Grasslands, and other areas known collectively as the National Forest System (NFS). The Chief of the Forest Service, through an organization of Regional Foresters, Forest Supervisors, and District Rangers, administers and manages the NFS's natural resources within the principle of multiple use and sustained yield. For decades, the Forest Service has implemented terrestrial and aquatic restoration projects. Some of these projects encompassed actions that promoted restoration activities related to floodplains, wetlands and watersheds, or damage resulting from past disturbance events. The Forest Service has found that under normal circumstances the environmental effects of certain restoration activities have not been individually or cumulatively environmentally significant. The Forest Service's experience predicting and evaluating the environmental effects of the category of activities outlined in this rule has led the

Agency to supplement its NEPA regulations by adding three new categorical exclusions for activities that achieve soil and water restoration objectives.

Category 18 allows the restoration of wetlands, streams, and riparian areas by removing, replacing, or modifying water control structures such as, but not limited to, dams, levees, dikes, drainage tiles, ditches, culverts, pipes, valves, gates, and fencing to allow waters to flow into natural channels and floodplains that restore natural flow regimes to the extent practicable.

Category 19 allows for the removal of debris and sediment following disturbance events (such as floods, hurricanes, tornados, mechanical/ engineering failures, etc.) to restore uplands, wetlands, or riparian systems to pre-disturbance conditions, to the extent practicable, such that site conditions will not impede or negatively alter natural processes.

Category 20 allows for implementing restoration activities that restore, rehabilitate, and/or stabilize lands occupied by roads and trails, excluding National Forest System Roads and National Forest System Trails, to a more natural condition by removing, replacing, or modifying drainage structures and ditches, reestablishing vegetation, reshaping natural contours and slopes, reestablishing drainage-ways, or other activities that will restore site productivity and reduce environmental impacts.

These three Forest Service categorically excluded actions promote hydrologic, aquatic, and landscape restoration activities and thereby sustain natural resource values through more efficient management. All three CEs involve activities that are intended to maintain or restore ecological functions and better align the Agency's regulations, specifically its CEs, with the Agency's current activities and experiences related to restoration.

Many national forests have unmaintained roads and trails that are not on the National Forest Transportation System or are unauthorized. These routes are often found adjacent or in close proximity to NFS roads and NFS trails. These roads and trails are a major challenge in many national forests and examples of significant environmental damage and safety issues.

Restoring lands occupied by roads and trails is important to promote hydrologic, aquatic, and watershed restoration. Activities that restore lands occupied by a road or trail may include reestablishing former drainage patterns, stabilizing slopes, restoring vegetation, blocking the entrance to the road, installing waterbars, removing culverts, removing unstable fills, pulling back road shoulders, and completely eliminating the road bed by restoring natural contours and slopes.

The Forest Service believes it is appropriate to establish soil and water restoration CEs based on NEPA implementing regulations at 40 CFR 1500.4(p) and 1500.5(k) that identify a CE as a means to reduce paperwork and delays in project implementation, and based on the Agency's abundant information showing that the majority of these identified restoration actions have no significant impacts.

The Forest Service prepares approximately 2,500 to 3,000 CE decision memos and 400 environmental assessments (EAs) each year. Because document preparation and review for CEs takes approximately 6 to 9 months less time than a typical EA that can be hundreds of pages long, cost savings are significant. By using CEs, the Forest Service gains efficiencies that allow the Agency to move more efficiently through the environmental review process while not short-cutting public involvement or sacrificing environmental protection.

The Council on Environmental Quality (CEQ) regulations at 40 CFR 1507.3 provide that agency's National Environmental Policy Act (NEPA) procedures, after notice and comment, may identify categories of actions that do not have significant impacts on the human environment and, consequently, do not require preparation of an environmental assessment (EA) or an environmental impact statement (EIS). Current Forest Service procedures for complying with and implementing NEPA are set out in 36 CFR Part 220. Title 36 CFR 220.6 of the Forest Service NEPA Regulations lists the categories of actions that do not require preparation of an EA or an EIS by the Forest Service absent extraordinary circumstances.

Pursuant to CEQ's implementing regulations at 40 CFR 1507.3 and the November 23, 2010, CEQ guidance memorandum on "Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act," (www.nepa.gov) the Forest Service gathered information supporting establishment of these three categorical exclusions.

Based on its review of all the information provided, the Forest Service finds that the CEs will not individually or cumulatively have significant effects on the human environment. The Agency's finding is predicated on data from implementing comparable past actions; the expert judgment of the responsible officials who made the findings for projects reviewed for this supporting statement; information from other professional staff, experts, and scientific analyses; a review and comparison of similar CEs implemented by other Federal agencies; and the Forest Service's experience implementing soil and water restoration activities and subsequent monitoring of potential associated impacts. This combination of reviews gives the Forest Service confidence that the CEs will facilitate

scientifically sound, efficient, and timely planning and decision making for select soil and water restoration activities. Additional information regarding this review is available at <http://www.fs.fed.us/emc/nepa/restorationCE>.

Actions relying on any of these CEs remain subject to Agency requirements to conduct scoping and require a determination that there are not extraordinary circumstances that would otherwise require documentation in an EA or EIS. These CEs will require a project or case file and decision memo, including, in part, a rationale for using the CEs and a finding that extraordinary circumstances do not exist.

The main clarifications to the proposed CEs in this final rule include:

- Clarifying that activities to remove, replace, or modify water control structures will not alter or cancel valid existing rights or special use authorizations;
- Adding text to an example in CE 18 that illustrates the size and scope of dam removal;
- Replacing the term “non-system roads and trails” with “excluding National Forest System Roads and National Forest System Trails” in CE 20. This clarification ensures that terminology in CE 20 conforms to corresponding terminology in Forest Service regulations and directives (36 CFR 212.1 and Forest Service Manual (FSM) 7705);
- Deleting an example in CE 20 that duplicates actions in another example;
- Removing example text that either directly or indirectly overlaps with existing CE activities – such as the removal of downed or damaged trees to restore wildlife or aquatic habitat; and

- Removing the distinction between “natural or human” caused disturbance events.

Other clarifications are highlighted in the response to comments.

Pursuant to regulations at 40 CFR 1505.1 and 1507.3, the Forest Service consulted with CEQ during the development of the CEs. Prior to the publication of these final CEs, CEQ provided written confirmation that amending Forest Service NEPA procedures by adding the new CEs was in conformity with NEPA and the CEQ regulations. This letter is available at <http://www.fs.fed.us/emc/nepa/restorationCE>.

To improve clarity, the final rule received minor text adjustments and corrections to punctuation and grammar. These edits did not change the substance, meaning, or implementation of the CEs.

Comments on the Proposal

The proposed rule was published in the *Federal Register* on June 13, 2012 (77 FR 35323), for a 60-day comment period. The Forest Service received 9,660 responses, consisting of letters, e-mails, web-based submissions, and facsimiles. Of those, 420 were original responses, and the remaining 9,240 responses were organized response campaign (form) letters. Comments were received from the public, local governments, and other State and Federal agencies. The respondents represented all 50 States, the District of Columbia, Puerto Rico, Federated States of Micronesia, and several foreign countries. The States with the largest number of responses include California (1,708), New York (839), and Florida (589). The Forest Service received responses from two Federal agencies and 12 county government officials.

Public comment on the proposed rule addressed a wide range of topics, many of which were directed at access and travel management issues on NFS lands. Many people supported the proposed CEs or favored further expansion of their categorically excluded activities, while many others opposed the proposal or recommended no further consideration of one or more of the categories. The Department considered all the comments and made a number of changes to the text of the CEs in response. A summary of comments received and the Department's responses follow.

Categorical Exclusion #18 Comments

Some respondents suggested that removal of water control structures could have significant indirect effects by reducing flows to livestock watering holes and wildlife habitat. Others were concerned that the lack of thresholds would cause direct and indirect effects that would warrant documentation in an EA or EIS.

Response: Typically, the Agency has found that these particular activities do not have significant effects. If the removal of a water control structure has potential for a “significant” effect, an EA or EIS will be prepared.

CEs are an essential part of NEPA that provide an agency's determination that certain actions do not result in significant impacts to the environment, eliminating the need for lengthy documentation. The reduced documentation requirement for projects applying categorical exclusions does not mean that the projects avoid or escape environmental analysis. Rather, a thorough environmental analysis is conducted but paperwork is limited commensurate with an agency's experience conducting similar actions and with full regard to the potential for extraordinary circumstances that warrant preparation of an EA or EIS.

These CEs will not apply where there are extraordinary circumstances such as adverse effects on threatened and endangered species or their designated critical habitat, wilderness areas, inventoried roadless areas, wetlands, and archeological or historic sites.

One comment highlighted that dams vary in size, amount of water impounded and the amount of excavation, dredging, placement of fill, and reengineering needed. Other respondents commented that CE 18, as worded, lacked specific quantifiable limitations on the amount of acceptable ground disturbance while others suggest that the use of the term "minimal" required additional clarity.

Response: CE 18 is limited to activities with a specific goal and outcome, which is restoration of lands impacted by water control structures. In response to the public comment for more specific limitations on the amount of ground disturbance, the Agency has further defined the category to not allow altering or canceling existing rights or special use authorizations; provided a specific example of a type of culvert to be replaced; and specific type and hazard potential of dams proposed for removal, replacement, or modification.

Based on Forest Service direction in Forest Service Manual (FSM) 7500, the text of CE 18 now includes an example that articulates the type and hazard potential of dams proposed for removal, replacement, or modification. This example provides a hazard classification that includes dams where failure, malfunction, or misoperation would result in no probable loss of human life and minor damages limited to undeveloped or agricultural lands and for which significant improvements are not planned.

One respondent commented that any proposal that requires a Clean Water Act National Pollution Discharge Elimination System (NPDES) or Section 401 permit should require documentation in a full EA or EIS and not be categorically excluded.

Response: It is appropriate to coordinate NEPA review processes with other planning or environmental reviews (40 CFR 1500.2(c)). The mere existence of a State or Federal permit requirement is not a strong indicator of the degree of environmental significance of an action for purposes of NEPA. Also, State programs implementing NPDES requirements can be quite variable and would impede consistent application of NEPA across the National Forest System.

Some respondents highlighted the concern that removal of water control structures without consideration or respect for State water laws, valid adjudicated water rights, and the constitutionally held water rights of States and individual citizens could result in a complete or partial taking. Similarly, several respondents stated that the Forest Service cannot, in contradiction to Federal policy, close any rights-of-way and remove access to water rights for present and future mineral or ranching operations.

The Department recognizes the concern over protecting existing access and use of water and water-related facilities. Nothing in the final rule authorizes the alteration or revocation of any existing rights, contracts, permits, special use authorizations, or other legal instruments held by miners, grazing permittees, States, or other entities. To give further assurance that the function of this category deals exclusively with restoration of wetlands, streams and riparian areas, rather than affecting rights and privileges of use, CE 18 has been modified to include an express assurance and qualification that the category

is only available where actions are consistent with valid existing rights and legal instruments.

One respondent commented that any decision with respect to the efficacy, safety, or functioning of any small dam regulated by individual States is beyond the competence of any District Office or personnel of the Forest Service.

Response: The Federal Guidelines for Dam Safety require periodic inspection and evaluation of dams to reduce the risk to human life and property from dam failure. In accordance with Forest Service direction (FSM 7504.6), Forest Supervisors are responsible for designating a qualified engineer to provide technical oversight of construction, inspection, and management of dams operated by the Forest Service.

An operation and maintenance (O&M) plan is required for any dam with a significant or high hazard potential classification operated by the Forest Service or the holder of a special use authorization on NFS lands (FSM 7513). O&M plans may be prepared for dams with a low hazard potential classification if warranted based on their significance or complexity. The owner of a dam is responsible for preparing and maintaining an O&M plan for that dam. Coordination with the Forest Service and appropriate State agencies in the preparation of O&M plans for dams operated by the holder of a special use authorization is required. O&M plans for dams operated by the holder of a special use authorization are reviewed by a qualified engineer and approved by the authorized officer. Further direction regarding inspection programs is found in FSM 7514.

Categorical Exclusion #19 Comments

One respondent suggested that the use of riprap, rocks, and bioengineering techniques are directly at odds with the concept of restoring natural processes.

Response: CE 19 aims to restore uplands, wetlands, or riparian systems, to the extent practical, through the removal of debris and sediment following disturbance events. In some instances, this may include the stabilization of sediment sources through the use of riprap, rocks, and other techniques. By reducing sources of sedimentation downslope or downstream, wetlands or riparian systems have an increased likelihood of successful recovery from disturbance events.

Some respondents commented on the use of the term "human caused events" and expressed concern that the term is ambiguous and could be broadly interpreted to include "any multiple use activity undertaken by the Forest Service."

Response: The Department agrees that the use of the term “human-caused disturbance events” provided a level of confusion. Similarly, limiting the category of actions to only “natural disturbance events” did not provide for restorative actions that result from events that result from man-caused events. In both cases, the intent of the category is for restoration activities that remove debris and sediment following disturbance “events”, not correcting chronic sources of debris and sediment. With this in mind, the text of CE 19 was modified to remove reference to “natural and human” caused disturbance events by simply using the term “disturbance event” together with parenthetically including an example list of possible events. To clarify the intent of the category, the word “directly” now precedes the term disturbance event that focuses the restoration activities on disturbances, not past management activities.

Other respondents requested clarification on the terms "pre-disturbance conditions" and "natural processes" and how such conditions will be determined.

Response: The Department determined that in some cases restoring sites to a natural condition, such as those conditions within the natural range of variation, is not attainable without major site reconstruction or may not be desirable due to current management and use of the site. Therefore, the use of the term “pre-disturbance conditions” was included. The intent of CE 19 is to stabilize debris and sediment sources and restore the sites to the conditions that existed prior to the disturbance event. The intent is not to modify the existing management emphasis or current use of the site.

One comment highlighted the importance of downed and dead tree removal for restoration, clean-up, and repair activities along utility lines and corridors after a disturbance. Other respondents suggested that the proposed removal of downed and damaged trees is not needed to improve wildlife habitat and is unrelated to the restoration of soil and water resources. Another respondent suggested that the Forest Service should ensure that any potential benefits related to downed trees are evaluated prior to removing such debris from rivers and streams following natural events.

Response: The Department believes that in certain cases the removal of down and damaged trees is beneficial to the habitat of terrestrial or aquatic species. The intent of this example is to restore sites impacted by disturbance events where the amount and juxtaposition of downed and damaged trees is negatively impacting species habitat recovery or presents a health and safety risk to the public.

Upon further review, the Department believes that the Forest Service already has categories of actions that allow for wildlife habitat improvement; the maintenance of

roads, trails, or utility lines; and the protection of public health and safety. For example, safety hazard trees associated with roads, trails, recreation facilities, and administrative sites may be removed as part of routine maintenance of those facilities. Therefore, this example has been removed from CE 19 in the final rule.

Categorical Exclusion #20 Comments

Several respondents expressed a concern that the intent of CE 20 has not been clearly articulated or justified.

Response: The impact of roads and trails to watershed health has been widely documented. Roads affect watershed condition because more sediment is contributed to streams from roads and road construction than any other land management activity. Roads directly alter natural sediment and hydrologic regimes by changing streamflow patterns and amounts, sediment loading, transport, deposition, channel morphology and stability, and water quality and riparian conditions within a watershed. Roads can also increase sediment routing to streams by creating areas prone to surface runoff, altering slope stability in cut-and-fill areas, removing vegetation, and altering drainage patterns. Road density is known to add to sediment caused by erosion and mass wasting in upland forested landscapes in the Pacific Northwest, and it is reasonable to assume that similar relationships exist elsewhere. Road-related mass soil movements can continue for decades after roads have been constructed, and long-term slope failures frequently occur after road construction and timber harvest.

CE 20 focuses on the restoration of lands occupied by roads and trails to restore site productivity and reduce environmental impacts. Project decisions made using this CE will be aimed at restoration goals and will not be used to make access decisions. The

Forest Service maintains this intent of CE 20 by excluding its application from National Forest System Roads and National Forest System Trails. This category's focus is on roads and trails that have been illegally created, or have already been removed from the Agency's designated road and trail system. The intent of this category is to restore lands occupied by roads and trails where legal access is already prohibited.

Many respondents expressed concern that establishment of CE 20 would make it easier for the Forest Service to reduce the number and mileage of trails and roads and therefore exclude many legitimate uses of the Forests. Another respondent commented that further restriction of use by hikers, bicycles, motorcycles, horses, campers, and so on only increases the damage to the trails/roads that remain.

Response: The road and trail restoration CE 20 will not be used to make access decisions about which roads and trails are to be designated open for public use, or which will be closed from public use. Nothing in the final rule revokes any contracts, special use authorizations, legal instruments, or right-of-way held by any entity. CE 20 will not restrict or remove the legal use or access of roads or trails by the recreational community, law enforcement personnel, search and rescue organizations, or other uses where that access and use is not already prohibited.

The restoration of lands occupied by roads and trails is important to promote hydrologic, aquatic, and watershed restoration. This CE will allow the Forest Service to restore roads and trails more efficiently where public access is not currently permitted – roads and trails that are already closed.

A number of respondents commented that the Forest Service should be opening up more lands for use by the public instead of removing roads and trails from the system,

and characterized CE 20 as an effort to slowly remove any and all motorized vehicle access to NFS lands.

Response: The Department disagrees with this characterization of this rule. CE 20 will not be used to remove motorized vehicle access. It will be used to restore lands where access is already prohibited.

Additionally, unless specifically restricted, all NFS lands are open for use by the public. Yet, not all NFS lands are intended to be open or accessed by roads. The Forest Service's multiple-use mission does not contemplate that every acre of National Forest be managed for every multiple use as Congress recognizes that some land will be used for less than all of the resources (16 U.S.C. 531). The Forest Service provides for a wide range of user experiences, including remote recreational experiences that are accessed by non-road or trail access.

One respondent stated that it is not motorized activities, but rather the lack of enforcement of existing laws governing motorized use, that cause resource damage. Others believe that rather than creating new rules, we need to enforce the ones we have.

Response: Forest Service law enforcement personnel play a critical role in ensuring compliance with laws and regulations, protecting public safety, and protecting National Forest resources. However, the scope of this final rule does not address enforcement of motorized use on NFS lands. This final rule addresses environmental analysis and documentation efficiencies for the restoration of lands occupied by roads and trails, with the exception of National Forest System Roads and National Forest System Trails.

Several respondents expressed the concern that road and trail closures, as well as removal of water barriers and bridges, will have a negative impact on Americans with disabilities that rely on this access to recreate on NFS lands.

Response: Under section 504 of the Rehabilitation Act of 1973, no person with a disability can be denied participation in a Federal program that is available to all other people solely because of his or her disability. A person with a disability must be able to achieve the purpose of a Federal program without modification to the program that fundamentally alters its nature. A fundamental alteration of the nature of a program occurs when a basic aspect of that program is changed. USDA's program and activity requirements and compliance procedures implementing section 504 are set forth in 7 CFR Part 15e.

In conformance with section 504, Americans with disabilities are welcome on all NFS lands that are open for public access. However, allowing people with disabilities to use routes that are not open to the public would fundamentally alter the nature of the Forest Service's travel management program.

Many respondents commented that the Forest Service has not adequately assessed the present and future needs of its road and trail system to provide for its multiple-use mandate, including wildfire suppression, search and rescue activities, forest management, and multiple recreational activities.

Response: The Forest Service is continuing to implement the 2005 Travel Management Rule. Completion of Subpart A (36 CFR 212.5(b)) will identify a properly sized road system for each NFS unit. The ultimate goal is management and sustainability of a road system that minimizes adverse environmental impacts by assuring roads are in

locations only where they are necessary to meet access needs, and can be maintained within budget constraints.

Apart from the goals and implementation of the 2005 Travel Management Rule, this final rule will be used for restoring lands impacted by roads and trails that are no longer needed, no longer maintained, and/or where access is already prohibited. This category will not be used to make access decisions about which roads and trails are to be designated for public use.

A couple of respondents expressed concerns that the environmental effects of road obliteration are far greater and less desirable than allowing a roadway to recover naturally and ultimately could result in unforeseen and unacceptable indirect effects though flooding to downstream public and private property owners.

Response: CE 20 allows for, barring the presence of extraordinary circumstances, a range of activities designed to restore lands impacted by roads and trails, excluding National Forest System Roads and National Forest System Trails. This includes the mechanized decommissioning activities, blocking of unauthorized access and allowing routes to recover naturally. Project-specific decisions on the appropriate method to restore impacted lands are based on site-specific conditions and will require a project or case file and decision memo, including, in part, a rationale for using the CE and a finding that extraordinary circumstances do not exist.

Some respondents commented on the importance of roads and trails to tribal communities to access sacred sites and state that further reduction of these access routes would impact tribal elders who rely on this access to reach these areas. They recommended working with Tribes before making such decisions. Other respondents

expressed concern over the impacts of decommissioning on cultural and archeological resources and on the historical importance that some of these routes hold for interpreting history.

Response: Effects on tribal sacred sites and other areas of historical, archeological, and cultural importance to Tribes, including effects of tribal access to those sites, may be possible on specific sites where the CEs will be used. As with the implementation of all CEs, Tribes will be contacted during the scoping process for projects with tribal implications, even if the project may be categorically excluded from further analysis and documentation in an EA or EIS.

Pursuant to Executive Order 13175, the Forest Service determined that this promulgation of this final rule would not have tribal implications requiring advance consultation. Yet the Forest Service maintains a strong commitment to government-to-government consultation on agency policies that may substantially affect Federally-recognized Indian Tribes, and to consulting with Alaska Native Corporations. Thus, on May 6, 2011, a package outlining the proposed rule was transmitted to each Forest Service Regional Forester for distribution and use in consultations with all Federally recognized Indian Tribes and Alaska Native Corporations

Several respondents commented that CE 20, as worded, lacked specific quantifiable limitations on the amount of acceptable soil displacement, ground disturbance, or miles of road allowable. Another respondent suggested the Forest Service should be overly cautious on implementing CE 20 and should exclude categorically excluded activities in floodplains, riparian areas, and areas near streams.

Other respondents state that while projects proposed under any CEs may have beneficial direct, indirect, and cumulative impacts that could be good; they also suggest numerical limits be placed on the size and scope of projects to ensure the benefits. Still other respondents contend that the proposed categories of actions do have significant effects and do not qualify for a CE.

Response: The three soil and water restoration CEs set forth in this final rule are intended to implement restorative activities that benefit wetlands, floodplains, riparian areas, stream courses, and those sites that are negatively impacting watershed and riparian health. Excluding their use from floodplains, riparian areas, or areas adjacent to streams would substantially diminish their ability to benefit watershed, riparian and upland health, and the Agency's ability to expedite restoration activities that fall under these three categories of actions.

CE 20 is for activities that restore, rehabilitate, or stabilize lands and to restore site productivity and reduce environmental impacts from existing site conditions. If there are extraordinary circumstances related to the proposed action, an EA or EIS will need to be prepared.

Any activity performed using one of the three new CEs must meet all applicable Federal, State, and local laws, as well as land and resource management plan standards and guidelines. Under the three new categories, the responsible official must conduct appropriate consultations with Federal and State regulatory agencies such as those required by the Endangered Species Act and the National Historic Preservation Act. For decades, the Forest Service has implemented terrestrial and aquatic restoration projects. The Agency's careful analysis during this rulemaking and long experience in dealing

with soil and water restoration treatments leads the Agency to conclude that implementation of the three new categories will not result in significant impacts on the environment.

Several respondents argued that if a prior access decision was necessary to use CE 20, then little to no efficiency would be gained in the NEPA process.

Response: CE 20 applies to roads and trails. The deliberate removal of a forest road or trail from the unit's travel management atlas would generally be accomplished through a unit's identification of the minimum road system needed for safe and efficient access, and the administration, use and protection of NFS lands. Such reviews are science based and include to the degree practical a broad spectrum of interested and affected citizens and other groups. Proposals based on the reviews are evaluated in compliance with NEPA. In cases where access decisions and road and trail decommissioning decisions are made at the same time, CE 20 will not be necessary. However, not all access decisions include specific proposals for decommissioning and CE 20 will be available in these situations.

Several respondents expressed support and highlighted the importance of protecting and accelerating restoration on National Forests, including the water produced within its watersheds.

Response: These comments were in support of the proposal and need no specific response.

Several respondents suggested that it would be less expensive to maintain roads and trails than to decommission them. Others suggest that much of the resource damage on roads and trails is not from use by the public, but by the inability of the Forest Service

to maintain them. In addition, several respondents addressed funding issues, such as how the Agency pays for restoration if it cannot pay for road maintenance.

Response: CE 20 applies to restoring lands occupied by roads and trails excluding National Forest System Roads and National Forest System Trails. The Agency expends appropriated funds to maintain National Forest System Roads and National Forest System Trails for motor vehicle use.

The Forest Service maintains forest roads and trails in accordance with their management objectives and availability of funding. Unfortunately, resources are limited, and the Forest Service has a substantial backlog of maintenance needs. The Agency's road maintenance funding has steadily decreased over the past decade, while trail maintenance funding has remained flat. These funding trends are anticipated to continue. Over time, all roads and trails require some level of maintenance. In some cases, an extended lack of maintenance can lead to so much deterioration of a road or trail that it must be closed to administrative and public use or ecologically restored to address user safety or prevent severe environmental damage.

Restoring lands occupied by roads and trails requires a one-time expense vs. long-term reoccurring road and trail maintenance funding.

A number of respondents encouraged broadening the scope of CE 20 to include restoration of forest roads that are currently closed to motorized use while others encouraged the Forest Service to allow for NFS and unauthorized roads to be converted to NFS trails. Similarly, one respondent suggested that although some Forest roads are not designated for motor vehicle use, they could remain open to non-motorized uses, such as mountain bicycling and horseback riding and should not be decommissioned.

Response: Designation of routes for motor vehicle use is beyond the scope of this rulemaking. Designation of routes is occurring consistent with the Forest Service's travel management rule at the local level. Decisions regarding whether to authorize non-motorized uses on roads and trails not designated for motor vehicle use are also beyond the scope of this rulemaking. Decisions to authorize non-motorized uses on such routes are made at the local level, consistent with the applicable land management plan and road and trail management objectives and the long-term economic, social, and environmental sustainability of the unit's road and trail system.

At this time the Department has chosen to move forward with establishing a road and trail restoration CE that excludes National Forest System Roads and National Forest System Trails. The Department agrees that proposals to convert certain NFS roads to NFS trails may be appropriate, and the Agency will continue to propose these conversions and document the appropriate environmental analysis and decision-making through existing CEs, an EA or, if necessary, in an EIS. The Department believes that the establishment of a CE for decisions that remove public and administrative use of forest transportation system roads and trails at this time is unnecessary and would divert public and agency focus from the Agency's continued implementation of the 2005 Travel Management Rule.

The Department also believes that the evaluation of roads for conversion to other uses, including motorized and non-motorized trail designation, is best handled at the local level by officials with first-hand knowledge of the particular circumstances, uses and environmental impacts involved, working closely with local governments, users and other

members of the public. The long-term economic, social, and environmental sustainability of the unit's road and trail system will also factor into this evaluation.

One respondent suggested the Forest Service prioritize the use of CE 20 to those roads and trails that are negatively impacting aquatic, hydrologic, or watershed resources.

Response: Roads and trails proposed for restoration are prioritized through a variety of criteria, including resource degradation, available funding, and public and private partnerships. Restoration activities, such as road and trail decommissioning, are also prioritized through the Watershed Condition Framework (WCF) (<http://www.fs.fed.us/publications/watershed/>), a comprehensive approach for proactively implementing integrated restoration on priority watersheds on National Forests and Grasslands. The WCF improves the way Forest Service approaches watershed restoration by targeting the implementation of integrated suites of activities in those watersheds that have been identified as priorities for restoration. The WCF prioritizes watersheds for restoration and develops watershed action plans that may include road and trail restoration proposals. Implementing CE 20 will allow the Agency to more efficiently improve watershed conditions by restoring lands occupied by unauthorized roads and trails that have been identified as sources of ecological degradation.

Several comments highlighted the concern that decommissioning roads that have valid existing rights-of-ways may have significant impacts to local economies if roads that access water, grazing allotments, mineral entries, or other inholdings were eliminated under these proposed CE. Others expressed concerns over the social,

cultural, and economic impacts, and unintended consequences that communities would encounter from road closures.

Response: Most national forest visitors use authorized routes to access the national forests, whether for recreational sightseeing; camping and hiking; hunting and fishing; commercial purposes such as logging, mining, and grazing; administration of utilities and other land uses; outfitting and guiding; or many other multiple uses of NFS lands. Any access associated with the exercise of valid existing rights or other permitted authorized uses of the NFS will be on authorized private, NFS, or State, county, or local routes. Restoring roads and trails using CE 20 will not affect access via authorized routes.

One respondent suggested that the proposed rule did not take a hard look at the environmental justice impacts under Executive Order 12898.

Response: The Department takes its environmental justice responsibilities very seriously and principles of environmental justice are considered throughout decision-making. This final rule establishing these CEs does not itself compel or authorize any particular action and the Department sees no indication the establishment will cause disproportionately high and adverse effects on the environment and human health of minority and/or low-income populations. Further, the Forest Service applies strategies and techniques during its NEPA compliance efforts to ensure compliance with E.O. 12898 so that meaningful environmental justice considerations can be appropriately assessed at the project level.

One respondent expressed concern that the proposed rule seeks to obliterate unauthorized routes, and the Forest Service cannot then fulfill its promise under 36 CFR 212.50 that such routes may be added to the forest transportation system.

Response: The Department recognizes that the Forest Service's road and trail systems will continue to meet changing administrative and social needs and are based on the consideration of ecological, social, and economic sustainability. Designations of NFS roads, NFS trails, and areas on NFS lands pursuant to 36 CFR 212.51 may be revised as needed to meet changing conditions. Revisions of designations are made in accordance with the requirements for public involvement and the requirements for coordination with governments and Tribes. Public involvement is also required when restoration activities are proposed to be categorically excluded from documentation in an EA or EIS using CE 20.

One respondent commented that all roads not identified on a national forest's motor vehicle use map under the travel management rule and process are considered "unauthorized" and could be decommissioned without further public comment.

Response: Unauthorized roads defined in the travel management rule are not roads excluded from the Forest Service unit's motor vehicle use map. Any proposals to decommission roads (unauthorized or not), will go through the NEPA process, including "scoping" under Forest Service NEPA procedures. Scoping is required for Forest Service categorical exclusions.

Several respondents commented that the public involvement process on initial access decisions does not dampen the issues associated with road closures, and broad public involvement is warranted for projects subject to proposed CE 20. Others

expressed concern that proposed CE 20 would shortcut the public involvement process required by an EA or EIS conducted as part of the travel management process.

Response: Public involvement associated with decommissioning forest roads as part of transportation planning is required by 36 CFR 212.5(b). Public involvement associated with designation or revision of the motor vehicle use map maintained as part of the travel management rule is governed by 36 CFR 212.52. The Forest Service's experience is that the majority of issues associated with road and trail restoration activities are related to access and travel management policies, rather than from implementing restoration projects. CE 20 applies to restoration work on lands occupied by unneeded and unauthorized roads and trails and does not include National Forest System Roads and National Forest System Trails. When applying CE 20, Forest Service officials will conduct appropriate scoping and public involvement assuring that citizen views are taken into account in an appropriate manner given the context of the decisions being made.

Comments Applicable to All Three Categories

One respondent expressed concern that the proposed CEs would allow the Forest Service to conduct work outside of NFS boundaries and as such could not be supported.

Response: Establishing these CEs in the Agency's NEPA regulations does not expand the scope of the Forest Service's authority to fund, authorize or carry out restoration activities. Additionally, this rule does not authorize any on-the-ground actions, whether inside or outside the administrative boundary of the NFS. All Forest Service actions, whether on or off NFS lands, must be independently supported by valid statutory authority.

One respondent questioned that Forest Service Chief Thomas L. Tidwell did not have delegated authority to promulgate rules and regulations, such as these proposed CEs.

Response: The Chief of the Forest Service has been delegated authority to issue proposed rules relating to Forest Service programs (7 CFR 2.60(a)(37)). The authority to issue final rules and regulations relating to administration of Forest Service programs is reserved to the Secretary or Under Secretary for Natural Resources and Environment, except as otherwise provided (7 CFR 2.60(b)(1)).

Several respondents expressed concern that the proposed rule is an attempt to circumvent the NEPA and the CEs given the Forest Service latitude to implement a wide and abusive range of activities when the language "examples include but are not limited to" is included.

Response: When using these three CEs, the responsible officials will consider, on a project-by-project basis, whether or not any of the Forest Service identified extraordinary circumstances apply. The responsible official will prepare a project file and decision memo that will be available for public review (36 CFR 220.6(f)). The decision memo contains the responsible official's rationale for categorically excluding an action and selecting that particular category, and includes a determination that no extraordinary circumstances exist.

CEs are an integral part of NEPA compliance and use of CEs in no way evades compliance with NEPA. Additionally, CEs are a legitimate tool for reducing excessive paperwork and avoiding allocating resources where they are not needed, thereby allowing the Agency to devote more resources to environmental analysis and subsequent decision-

making. The CEQ regulations for implementing the procedural provisions of NEPA direct Federal agencies to identify those typical classes of actions that normally do not require either an EIS or EA (40 CFR 1507.3). CEQ defines such classes of actions as CEs. “Categorical exclusion” means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an EA nor an EIS is required (40 CFR 1508.4).

In subsequent guidance regarding NEPA regulations, CEQ explained that the use of CEs avoids unnecessary documentation of minor environmental effects in EAs and allows agencies to focus their environmental review efforts on the major actions that will have a significant effect on the environment (48 FR 34263), also see 40 CFR 1500.4(p)). CEQ also encourages agencies to identify CEs using broadly defined criteria that characterize types of actions that normally do not have significant environmental effects, including cumulative effects (48 FR 34263).

Concerns over the misuse of these CEs to allow soil and water restoration activities can be addressed through agency oversight on the application of the categories.

Several comments supported the proposed CEs and NEPA efficiencies for projects that are intended to benefit the environment, and are likely to have little if any negative environmental effects. Others believe the Forest Service can continue to implement restoration projects effectively without these proposed CEs.

Response: CEs are to be used for routine actions that have been found by the Forest Service through experience and environmental review to have no significant

environmental effects either individually or cumulatively (40 CFR 1508.4). Forest Service NEPA procedures require that all proposed actions to be categorically excluded from documentation in an EA or EIS must be reviewed for extraordinary circumstances and may include appropriate surveys and analyses, taking into account best available science, and appropriate consultation with Tribes and regulatory agencies, as required by the Endangered Species Act, the National Historic Preservation Act, Clean Water Act, and Clear Air Act. Accordingly, these CEs do not apply where there are extraordinary circumstances (36 CFR 220.6(b)).

Some respondents commented that the proposed CEs are redundant and suggested there are categories of actions already in place that cover water restoration, road maintenance and repair, riparian and habitat protection, or that a simple EA could suffice in other situations.

Response: The Department has carefully reviewed the proposed rule against existing agency CEs and determined that the restoration activities promulgated in this final rule are not redundant with existing agency categories. The review of the proposed rule led to the elimination of CE 19, example #3, which was determined to be redundant with activities included under an existing category.

Some respondents suggested the Forest Service should not rely solely on the judgment of the responsible official to decide whether an impact displays the necessary relationships and potential for effects and the subsequent need for an EA or EIS. They recommend numeric thresholds to determine when proposals no longer fit under CEs to prevent line officers from abusing their authority.

Response: The Forest Service's NEPA procedures (36 CFR 220.6) list the categories of actions that the Agency has found typically will not have individually or cumulatively significant effects on the human environment. These procedures also provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect. These extraordinary circumstances includes a list of

“[r]esource conditions that should be considered in determining whether extraordinary circumstances related to the proposed action warrant further analysis and documentation in an EA [environmental assessment] or an EIS [environmental impact statement] . . .”

The regulations at 36 CFR 220.6(b)(2) also state, “[t]he mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion. It is (1) the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions and (2) if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.

The Forest Service has consistently considered current information when making initial determinations on the use of a CE. Pursuant to existing direction, the Forest Service must conduct a sufficient review to determine that no extraordinary circumstances preclude the use of CEs. This determination may include appropriate surveys, consideration of the best available science, consultation with Tribes, and coordination with agencies that have regulatory responsibilities under other statutes, such as the Endangered Species Act, National Historic Preservation Act, Clean Water Act, and

Clean Air Act. Responsible Officials consider, on a project-by-project basis, whether or not extraordinary circumstances exist.

Many respondents expressed concern that the use of a CE does not provide for adequate public participation and disclosure, placing a proposal only in the Schedule of Proposed Actions is inadequate scoping, and that an EA or EIS is necessary for the activities proposed under these categories of actions.

Response: As directed by CEQ regulations (40 CFR 1507.3), the Forest Service has developed agency policy for implementing the NEPA and CEQ's regulations. As noted in Forest Service NEPA regulations (26 CFR 220.4(e)): "Scoping is required for all Forest Service proposed actions, including those that would appear to be categorically excluded from further analysis and documentation in an EA [environmental assessment] or an EIS [environmental impact assessment]." The FSH 1909.15, chapter 10, section 11 further clarifies this stating: "Although the Council on Environmental Quality (CEQ) Regulations require scoping only for environmental impact statement (EIS) preparation, the Forest Service has broadened the concept to apply to all proposed actions."

As part of the scoping process for proposals potentially covered by these CEs, the responsible official must determine the extent of interest and invite the participation of affected Tribes, Federal agencies, State agencies, local agencies, and other interested parties, as appropriate. The Forest Service is committed to fulfilling its public involvement responsibilities with all parties interested in projects potentially qualifying for these CEs.

Although not intended to be the sole scoping mechanism, the Forest Service also provides notice of upcoming proposals through the use of a Schedule of Proposed

Actions (36 CFR 220.4(e)(3) and FSH 1909.15, Zero Code, sec. 06). The schedule gives early and informal notice of proposals to make the public aware of Forest Service activities and provides an opportunity for the public to indicate their interest in specific proposals. Schedules may be distributed in hard copy by the respective forest and can be found at <http://www.fs.fed.us/sopa>.

Finally, it is important to note that the level of environmental documentation, whether in a CE, EA, or EIS is based on the potential for or lack of significant environmental effects.

Many comments expressed concern that the use of a CE will reduce the need for public input and eliminate the notice, comment, and appeals procedure for these categories of actions.

Response: On March 19, 2012, the U.S. District Court for the Eastern District of California found that Forest Service regulations exempting certain categorically excluded projects from notice, comment, and appeal violated the Appeals Reform Act (ARA) and enjoined the Forest Service, from applying 36 CFR 215.4(a) and 215.12(f) for certain categorical exclusions.

The Forest Service has appealed that decision but instructed its Line Officers to abide and comply with the District Court's orders. At least for now, the three CEs are subject to the public notice, comment, and appeal procedures being applied for other CEs that require a decision memorandum (36 CFR 220.6(e)).

One respondent stated the Forest Service has no mission to restore lands to pre-disturbance or pre-settlement conditions and suggested the type of restoration proposed in this rule does not meet NFS needs.

Response: The authority for restoring NFS lands derives from many laws enacted by Congress that define the purpose of National Forests and Grasslands. Consistent with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528–531) (MUSYA), the Forest Service manages the NFS to sustain the multiple use of its renewable resources in perpetuity while maintaining the long-term health and productivity of the land. Resources are managed through a combination of approaches and concepts for the benefit of human communities and natural resources. Land management plans guide sustainable, integrated resource management of the resources within the plan area in the context of the broader landscape, giving due consideration to the relative values of the various resources in particular areas.

Thus the Forest Service has stated its mission is to “Sustain the health, diversity, and productivity of the Nation’s forests and grasslands to meet the needs of present and future generations” (FSM 1000, Zero Code, section 1020.21).

FSM 2020 provides for using ecological restoration to manage NFS lands in a sustainable manner. This directive reaches across all program areas and activities applicable to managing NFS lands and resources so as to ensure integration and coordination at all levels and within all organizational units.

One respondent commented that the information supporting the establishment of these CEs did not adequately address the socio-economic effects, as well as environmental effects.

Response: The primary economic effects of the CEs for soil and water restoration activities are changes in costs of conducting environmental analysis and documentation. Under current NEPA procedures, the level of analysis and documentation required for

these activities often required agency personnel to extend processing timeframes and expend undue resources and funding to document restoration projects in an EA. The Forest Service has determined that this categorical exclusion will not have an annual effect of \$100 million or more on the economy or adversely affect productivity, competition, jobs, the environment, public health or safety, or tribal, State, or local governments. The economic effect from these CEs is expected to result in a reduction in the administrative burden of preparing unnecessary EAs and findings of no significant impact.

Commenters suggested that the proposed policy runs counter to the collaborative process established by Federal land managers and the use of the proposed CEs are not acceptable without first coordinating proposed actions with local governments and interested and affected public.

Response: The Forest Service strongly believes in engaging Tribes and Native Corporations, other Federal agencies, State and local governments, individuals, and public and private organizations or entities, using collaborative processes where feasible and appropriate. CEs require scoping for public participation and the responsible official must determine the extent of interest and invite the participation of affected Federal agencies, affected Tribes, State and local agencies, and other interested parties, as appropriate. The scoping process may incorporate collaborative components in the public involvement process, as determined locally for a site-specific project based on the interested and affected public.

One commenter questioned the validity of reviewing other agency CEs in supporting this proposed rule stating other agencies have missions, environmental and

geophysical conditions, and a scope of projects that are different than those encountered by the Forest Service.

Response: Pursuant to CEQ's November 23, 2010, CEQ guidance memorandum on "Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act," (www.nepa.gov) the Forest Service gathered information supporting establishment of these three CEs. The information gathered includes data from implementing comparable past actions; the expert judgment of the responsible officials who made the findings for the projects reviewed for this supporting statement; information from other professional staff and experts, and scientific analyses; a review and comparison of similar CEs implemented by other Federal agencies; and the Forest Service's experience implementing soil and water restoration activities and subsequent monitoring of potential associated impacts.

The November 23, 2010, CEQ guidance memo also allows for the "benchmarking of other agency experiences," that is using comparable actions (categorically excluded actions) from other Federal agencies. The Forest Service has identified a set of CEs from other Federal agencies that have similar characteristics, similar methods of implementation; applicable procedures (including extraordinary procedures), and context and timing (including the environmental settings).

Conclusion

The USDA Forest Service finds that the category of actions defined in the CEs presented at the end of this notice do not individually or cumulatively have a significant effect on the human environment. The Agency's finding is first predicated on the reasoned expert judgment of the responsible officials who made the original findings and

determinations in the restoration projects reviewed; the professional staff and experts consulted on the activities in these CEs; the benchmarked CEs of other Federal agencies; and, finally, the Agency's judgment that the profile of soil and water restoration activities represents the Agency's past practices and is indicative of the Agency's future activities.

These CEs will permit timely environmental documentation, decision-making and implementation of select soil and water restoration activities. Additionally, it will conserve limited agency funds.

The text of the final categorical exclusions is set out at the end of this notice.

Regulatory Certification

Environmental Impact

The intent of the final rule is to increase administrative efficiency in connection with conducting important restoration activities while assuring that no significant environmental effects occur. The amendment of Forest Service NEPA Regulations (36 CFR 220.6) concerns NEPA documentation for certain types of soil and water restoration activities. The CEQ does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: Those that require preparation of an EIS; those that require preparation of an EA; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). CEs are one part of those agency procedures, and therefore establishing CEs does not require preparation of a NEPA analysis or document. Agency NEPA procedures are internal procedural

guidance to assist agencies in fulfilling Agency responsibilities under NEPA, but are not the Agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing CEs does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc. v. U.S. Forest Service*, 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff'd*, 230 F. 3d 947, 954–55 (7th Cir. 2000).

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. The Office of Management and Budget has determined that this is not a significant rule. The final rule would not have an annual effect of \$100 million or more on the economy, nor would it adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local government. This final rule would not interfere with an action taken or planned by another agency, nor would it raise new legal or policy issues. Finally, this final rule would not alter the budgetary impacts of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients of such programs.

Regulatory Flexibility Act

This final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). The Agency has determined that this final rule would not have a significant economic impact on a substantial number of small entities as defined by the Act because the final rule would not impose record-keeping requirements; it does not

affect their competitive position in relation to large entities; and it would not affect their cash flow, liquidity, or ability to remain in the market.

Federalism

The Agency has considered this final rule under the requirements of Executive Order 13132, “Federalism.” The Agency has concluded that the final rule conforms with the federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the states or the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary.

Consultation and Coordination with Indian Tribal Governments

Pursuant to Executive Order 13175 of November 6, 2000, “Consultation and Coordination with Indian tribal Governments,” the Agency has assessed the impact of this final rule on Indian Tribes and has determined that it would not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, and therefore the final rule would not have tribal implications. The final rule deals with requirements for NEPA analysis and has no direct effect on occupancy and use of NFS lands. The Agency has also determined that this final rule would not impose substantial direct compliance costs on Indian tribal governments or preempt tribal law. Therefore, it has been determined that this final rule does not require advance consultation with Indian Tribes under Executive Order 13175.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights.” The Agency has determined that the final rule would not pose the risk of a taking of protected private property.

Civil Justice Reform

The Agency has reviewed this final rule under Executive Order 12988 of February 7, 1996, “Civil Justice Reform.” After adoption of this final rule, (1) all State and local laws and regulations that conflict with this final rule or that would impede full implementation of this final rule would be preempted; (2) no retroactive effect would be given to this final rule; and (3) the final rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), which the President signed into law on March 22, 1995, the Agency has assessed the effects of this rule on State, local, and tribal governments and the private sector. This final rule would not compel the expenditure of \$100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Energy Effects

The Agency has reviewed this final rule under Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.” The Agency has determined that this final rule does not constitute a significant energy action as defined in the Executive Order.

Controlling Paperwork Burdens on the Public

This final rule does not contain any additional record keeping or reporting requirements or other information collection requirements as defined in 5 CFR Part 1320 that are not already required by law or not already approved for use, and therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR Part 1320 do not apply.

List of Subjects in 36 CFR Part 220

Administrative practices and procedures, Environmental impact statements, Environmental protection, National forests, Science and technology.

For the reasons set out in the preamble, the Forest Service amends part 220 of Title 36 of the Code of Federal Regulations as follows:

PART 220—NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

COMPLIANCE

1. The authority citation for Part 220 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; E.O. 11514; 40 CFR parts 1500-1508; 7 CFR part 1b.

2. In §220.6, add paragraphs (e)(18), (19), and (20) to read as follows:

§220.6 Categorical exclusions.

* * * * *

(e)***

(18) Restoring wetlands, streams, riparian areas or other water bodies by removing, replacing, or modifying water control structures such as, but not limited to, dams, levees, dikes, ditches, culverts, pipes, drainage tiles, valves, gates, and fencing, to allow waters to flow into natural channels and floodplains and restore natural flow regimes to the extent practicable where valid existing rights or special use authorizations are not unilaterally altered or canceled. Examples include but are not limited to:

(i) Repairing an existing water control structure that is no longer functioning properly with minimal dredging, excavation, or placement of fill, and does not involve releasing hazardous substances;

(ii) Installing a newly-designed structure that replaces an existing culvert to improve aquatic organism passage and prevent resource and property damage where the road or trail maintenance level does not change;

(iii) Removing a culvert and installing a bridge to improve aquatic and/or terrestrial organism passage or prevent resource or property damage where the road or trail maintenance level does not change; and

(iv) Removing a small earthen and rock fill dam with a low hazard potential classification that is no longer needed.

(19) Removing and/or relocating debris and sediment following disturbance events (such as floods, hurricanes, tornados, mechanical/ engineering failures, etc.) to restore uplands, wetlands, or riparian systems to pre-disturbance conditions, to the extent practicable, such that site conditions will not impede or negatively alter natural processes. Examples include but are not limited to:

(i) Removing an unstable debris jam on a river following a flood event and relocating it back in the floodplain and stream channel to restore water flow and local bank stability;

(ii) Clean-up and removal of infrastructure flood debris, such as, benches, tables, outhouses, concrete, culverts, and asphalt following a hurricane from a stream reach and adjacent wetland area; and

(iii) Stabilizing stream banks and associated stabilization structures to reduce erosion through bioengineering techniques following a flood event, including the use of living and nonliving plant materials in combination with natural and synthetic support materials, such as rocks, riprap, geo-textiles, for slope stabilization, erosion reduction, and vegetative establishment and establishment of appropriate plant communities (bank shaping and planting, brush mattresses, log, root wad, and boulder stabilization methods).

(20) Activities that restore, rehabilitate, or stabilize lands occupied by roads and trails, excluding National Forest System Roads and National Forest System Trails, to a more natural condition that may include removing, replacing, or modifying drainage structures and ditches, reestablishing vegetation, reshaping natural contours and slopes, reestablishing drainage-ways, or other activities that would restore site productivity and reduce environmental impacts. Examples include but are not limited to:

(i) Decommissioning a road that is no longer a National Forest System Road to a more natural state by restoring natural contours and removing construction fills, loosening compacted soils, revegetating the roadbed and removing ditches and

culverts to reestablish natural drainage patterns;(ii) Restoring an unauthorized trail to a natural state by reestablishing natural drainage patterns, stabilizing slopes, reestablishing vegetation, and installing water bars; and

(ii) Installing boulders, logs, and berms on an unauthorized road segment to promote naturally regenerated grass, shrub, and tree growth.

* * * * *

Dated: August 30, 2013_____

Robert Bonnie,
Under Secretary,
Natural Resources and Environment.

[FR Doc. 2013-22151 Filed 09/11/2013 at 8:45 am; Publication Date: 09/12/2013]